

PROPOSITION 207

OFFICIAL TITLE

AN INITIATIVE MEASURE

AMENDING TITLE 12, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2.1;
RELATING TO THE PRIVATE PROPERTY RIGHTS PROTECTION ACT.

TEXT OF PROPOSED AMENDMENT

Be it enacted by the People of the State of Arizona:

Section 1. Short title

This act may be cited as the "Private Property Rights Protection Act".

Sec. 2. Findings and declarations

A. The people of Arizona find and declare:

1. Article 2, section 17 of our State Constitution declares in no uncertain terms that private property shall not be taken for private use.
2. Our Constitution further provides that no person shall be deprived of property without due process of law.
3. Finally, our Constitution does not permit property to be taken or damaged without just compensation having first been made.
4. Notwithstanding these clear constitutional rights, the state and municipal governments of Arizona consistently encroach on the rights of private citizens to own and use their property, requiring the people of this State to seek redress in our state and federal courts which have not always adequately protected private property rights as demanded by the State and Federal Constitutions. For example:
 - (a) A recent United States Supreme Court ruling, *Kelo v. City of New London*, allowed a city to exercise its power of eminent domain to take a citizen's home for the purpose of transferring control of the land to a private commercial developer.
 - (b) The City of Mesa used eminent domain to acquire and bulldoze homes for a redevelopment project that included a hotel and water park. After the developer's financing fell through the project was abandoned and the property left vacant.
 - (c) The City of Mesa filed condemnation actions against Randy Bailey, to take his family-owned brake shop, and Patrick Dennis, to take his auto-body shop, so that local business owners could relocate and expand a hardware store and an appliance store.
 - (d) The City of Tempe instituted an eminent domain action to condemn the home of Kenneth and Mary Ann Pillow in order to transfer their property to a private developer who planned to build upscale townhomes.
 - (e) The City of Chandler filed a condemnation action against a fast food restaurant in order to replace the fast-food restaurant with upscale dining and retail uses.
 - (f) In the wake of the *Kelo* ruling, the City of Tempe recently sought to condemn property in an industrial park in order to make way for an enormous retail shopping mall.
 - (g) The City of Tempe told the owners of an Apache Boulevard bowling alley that the City intended to condemn their property and specifically instructed them not to make further improvements to the land. Heeding Tempe's advice, the owners made no further improvements and ultimately lost bowling league contracts and went out of business. The Arizona Court of Appeals refused the owners' request for just compensation.
 - (h) Courts have also allowed state and local governments to impose significant prohibitions and restrictions on the use of private property without compensating the owner for the economic loss of value to that property.

5. For home owners in designated slum or blighted areas, the compensation received when a primary residence is seized is not truly just as required by our state constitution.

6. Furthermore, even when property is taken for a valid public use, the judicial processes available to property owners to obtain just compensation are burdensome, costly and unfair.

B. Having made the above findings, the people of Arizona declare that all property rights are fundamental rights and that all people have inalienable rights including the right to acquire, possess, control and protect property. Therefore the citizens of the State of Arizona hereby adopt the Private Property Rights Protection Act to ensure that Arizona citizens do not lose their home or property or lose the value of their home or property without just compensation. Whenever state and local governments take or diminish the value of private property, it is the intent of this act that the owner will receive just compensation, either by negotiation or by an efficient and fair judicial process.

Sec. 3. Title 12, chapter 8, Arizona Revised Statutes, is amended by adding article 2.1, to read:

Article 2.1. PRIVATE PROPERTY RIGHTS PROTECTION ACT

12-1131. PROPERTY MAY BE TAKEN ONLY FOR PUBLIC USE CONSISTENT WITH THIS ARTICLE
EMINENT DOMAIN MAY BE EXERCISED ONLY IF THE USE OF EMINENT DOMAIN IS

OF ACTION FOR JUST COMPENSATION IN A COURT IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED, UNLESS THIS STATE OR POLITICAL SUBDIVISION OF THIS STATE AND THE OWNER REACH AN AGREEMENT ON THE AMOUNT OF JUST COMPENSATION TO BE PAID, OR UNLESS THIS STATE OR POLITICAL SUBDIVISION OF THIS STATE AMENDS, REPEALS, OR ISSUES TO THE LANDOWNER A BINDING WAIVER OF ENFORCEMENT OF THE LAND USE LAW ON THE OWNER'S SPECIFIC PARCEL.

F. ANY DEMAND FOR LANDOWNER RELIEF OR ANY WAIVER THAT IS GRANTED IN LIEU OF COMPENSATION RUNS WITH THE LAND.

G. AN ACTION FOR JUST COMPENSATION BASED ON DIMINUTION IN VALUE MUST BE MADE OR FOREVER BARRED WITHIN THREE YEARS OF THE EFFECTIVE DATE OF THE LAND USE LAW, OR OF THE FIRST DATE THE REDUCTION OF THE EXISTING RIGHTS TO USE, DIVIDE, SELL OR POSSESS PROPERTY APPLIES TO THE OWNER'S PARCEL, WHICHEVER IS LATER.

H. THE REMEDY CREATED BY THIS SECTION IS IN ADDITION TO ANY OTHER REMEDY THAT IS PROVIDED BY THE LAWS AND CONSTITUTION OF THIS STATE OR THE UNITED STATES AND IS NOT INTENDED TO MODIFY OR REPLACE ANY OTHER REMEDY.

I. NOTHING IN THIS SECTION PROHIBITS THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE FROM REACHING AN AGREEMENT WITH A PRIVATE PROPERTY OWNER TO WAIVE A CLAIM FOR DIMINUTION IN VALUE REGARDING ANY PROPOSED ACTION BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE OR ACTION REQUESTED BY THE PROPERTY OWNER.

12-1135. ATTORNEY FEES AND COSTS

A. A PROPERTY OWNER IS NOT LIABLE TO THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE FOR ATTORNEY FEES OR COSTS IN ANY EMINENT DOMAIN ACTION OR IN ANY ACTION FOR DIMINUTION IN VALUE.

B. A PROPERTY OWNER SHALL BE AWARDED REASONABLE ATTORNEY FEES, COSTS AND EXPENSES IN EVERY EMINENT DOMAIN ACTION IN WHICH THE TAKING IS FOUND TO BE NOT FOR A PUBLIC USE.

C. IN ANY EMINENT DOMAIN ACTION FOR THE PURPOSE OF SLUM CLEARANCE AND REDEVELOPMENT, A PROPERTY OWNER SHALL BE AWARDED REASONABLE ATTORNEY FEES IN EVERY CASE IN WHICH THE FINAL AMOUNT OFFERED BY THE MUNICIPALITY WAS LESS THAN THE AMOUNT ASCERTAINED BY A JURY OR THE COURT IF A JURY IS WAIVED BY THE PROPERTY OWNER.

D. A PREVAILING PLAINTIFF IN AN ACTION FOR JUST COMPENSATION THAT IS BASED ON DIMINUTION IN VALUE PURSUANT TO SECTION 12-1134 MAY BE AWARDED COSTS, EXPENSES AND REASONABLE ATTORNEY FEES.

12-1136. DEFINITIONS

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "FAIR MARKET VALUE" MEANS THE MOST LIKELY PRICE ESTIMATED IN TERMS OF MONEY WHICH THE LAND WOULD BRING IF EXPOSED FOR SALE IN THE OPEN MARKET, WITH REASONABLE TIME ALLOWED IN WHICH TO FIND A PURCHASER, BUYING WITH KNOWLEDGE OF ALL THE USES AND PURPOSES TO WHICH IT IS ADAPTED AND FOR WHICH IT IS CAPABLE.

2. "JUST COMPENSATION" FOR PURPOSES OF AN ACTION FOR DIMINUTION IN VALUE MEANS THE SUM OF MONEY THAT IS EQUAL TO THE REDUCTION IN FAIR MARKET VALUE OF THE PROPERTY RESULTING FROM THE ENACTMENT OF THE LAND USE LAW AS OF THE DATE OF ENACTMENT OF THE LAND USE LAW.

3. "LAND USE LAW" MEANS ANY STATUTE, RULE, ORDINANCE, RESOLUTION OR LAW ENACTED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE THAT REGULATES THE USE OR DIVISION OF LAND OR ANY INTEREST IN LAND OR THAT REGULATES ACCEPTED FARMING OR FORESTRY PRACTICES.

4. "OWNER" MEANS THE HOLDER OF FEE TITLE TO THE SUBJECT REAL PROPERTY.

5. "PUBLIC USE":

(a) MEANS ANY OF THE FOLLOWING:

(i) THE POSSESSION, OCCUPATION, AND ENJOYMENT OF THE LAND BY THE GENERAL PUBLIC, OR BY PUBLIC AGENCIES;

(ii) THE USE OF LAND FOR THE CREATION OR FUNCTIONING OF UTILITIES;

(iii) THE ACQUISITION OF PROPERTY TO ELIMINATE A DIRECT THREAT TO PUBLIC HEALTH OR SAFETY CAUSED BY THE PROPERTY IN ITS CURRENT CONDITION, INCLUDING THE REMOVAL OF A STRUCTURE THAT IS BEYOND REPAIR OR UNFIT FOR HUMAN HABITATION OR USE; OR

(iv) THE ACQUISITION OF ABANDONED PROPERTY.

(b) DOES NOT INCLUDE THE PUBLIC BENEFITS OF ECONOMIC DEVELOPMENT, INCLUDING AN INCREASE IN TAX BASE, TAX REVENUES, EMPLOYMENT OR GENERAL ECONOMIC HEALTH.